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**Law-Den Nursing Home, Inc. and SEIU Healthcare
Michigan.** Case 07–CA–233610

March 17, 2020

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN RING AND MEMBERS KAPLAN AND
EMANUEL

The General Counsel seeks a default judgment in this case on the ground that Law-Den Nursing Home, Inc. (the Respondent) has failed to file an answer to the compliance specification and notice of hearing.

On October 16, 2019, the National Labor Relations Board issued a Decision and Order¹ granting the General Counsel's motion for default judgment on the grounds that the Respondent failed to file an answer to the complaint. The Board ordered the Respondent, in relevant part, to make employees whole for any losses suffered by reason of its failure to abide by the terms and conditions of its agreement with the Union over the effects of the closure of its Detroit, Michigan facility by failing and refusing to pay employees their accrued vacation pay and accrued sick pay.

A controversy having arisen over the amount of back-pay due, on July 12, 2019, the Regional Director for Region 7 issued a compliance specification and notice of hearing alleging the amounts due under the Board's Order and notifying the Respondent that an answer must be filed by August 2, 2019, in conformity with the Board's Rules and Regulations. The Respondent failed to file an answer.²

¹ 368 NLRB No. 95 (2019).

² The corrected motion for default judgment and attached exhibits indicate that the Region sent a copy of the compliance specification by certified mail to the Respondent's last known address. Tracking information provided by the United States Postal Service (Postal Service) indicates that the delivery attempt failed. The Region sent a reminder letter, including another copy of the compliance specification, by certified and regular mail on August 6, 2019, to the last known address of the Respondent. Tracking information provided by the Postal Service confirms delivery of the letter sent by certified mail. In addition, the letter with the included compliance specification sent by regular mail was not returned as undeliverable.

A respondent's failure or refusal to accept certified mail or to provide for receiving appropriate service cannot serve to defeat the purposes of the Act. See *Cray Construction Group LLC*, 341 NLRB 944, 944 fn. 5 (2004); *I.C.E. Electric, Inc.*, 339 NLRB 247, 247 fn. 2 (2003). Further, the failure of the Postal Service to return documents served by regular mail indicates actual receipt of those documents. *Id.*; *Lite Flight, Inc.*, 285 NLRB 649, 650 (1987), *enfd.* sub nom. *NLRB v. Sherman*, 843 F.2d 1392 (6th Cir. 1988).

By letter dated August 6, 2019, the Region advised the Respondent that no answer to the compliance specification had been received and that unless an answer was filed by August 13, 2019, a motion for default judgment would be filed. To date, the Respondent has failed to file an answer.

On January 8, 2020, the General Counsel filed corrected motions to transfer case to and continue proceedings before the Board and for default judgment.³ Thereafter, on February 4, 2020, the Board issued a Supplemental Notice to Show Cause why the General Counsel's corrected motion for default judgment should not be granted. The Respondent did not file a response. The allegations in the corrected motion and the compliance specification are therefore undisputed.

Ruling on the Corrected Motion for Default Judgment

Section 102.56(a) of the Board's Rules and Regulations provides that a respondent shall file an answer within 21 days from service of a compliance specification. Section 102.56(c) provides that if the respondent fails to file an answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without further notice to the respondent, find the specification to be true and enter such order as may be appropriate.

According to the uncontroverted allegations of the corrected motion for default judgment, the Respondent, despite having been advised of the filing requirements, has failed to file an answer to the compliance specification. In the absence of good cause for the failure to file an answer, we deem the allegations in the compliance specification to be admitted as true, and we grant the General Counsel's corrected motion for default judgment. Accordingly, we conclude that the net backpay due the affected employees is as stated in the compliance specification, and we will order the Respondent to pay those amounts, plus interest accrued to the date of payment.

ORDER

The National Labor Relations Board orders that the Respondent, Law-Den Nursing Home, Inc., Detroit, Michigan, its officers, agents, successors, and assigns, shall make whole the individuals named below by paying them the amounts following their names, plus interest

³ On October 25, 2019, the General Counsel filed motions to transfer case to and continue proceedings before the Board and for default judgment, which inadvertently failed to include certain attachments. On October 31, 2019, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motions should not be granted. The General Counsel subsequently filed corrected motions that included the omitted attachments, and the Board then issued a Supplemental Notice to Show Cause.

accrued to the date of payment as prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010), minus tax withholdings required by Federal and State laws.⁴

Karen Alexander	\$1,706.80
Pearl Bell	\$1,204.80
Stephanie Brooks	\$2,208.80
Donniea Buck	\$1,204.80
Jeaneen Burks	\$1,204.80
Angela Carey	\$1,204.80
Catlin McEntire	\$2,208.80
Ebony Christian	\$1,204.80
Keyonna Denham	\$1,204.80
Eddrienna Franklin	\$1,204.80
Kenya Greene	\$2,208.80
Brian Haynes	\$1,204.80
Kettana Hicks	\$2,710.80
Isobo Ikiiriko	\$1,204.80
Antonette Jackson	\$1,204.80
Eula Jackson	\$2,710.80
Emmanuel Jones	\$1,204.80
Valery Lisbon	\$1,204.80
Joyce McCroy	\$2,710.80
Cassandra McIlwain	\$1,204.80
David Mixon	\$1,204.80
Loleather Newson	\$2,710.80
Christopher Oneal	\$1,204.80
Sherie Osakwe	\$1,204.80
Dorothy Randolph	\$1,706.80
Tiffany Richardson	\$1,204.80
Darrell Shipp	\$1,706.80
Constance Showers	\$1,706.80
Deborah Smith	\$200.80
Miriah Smith	\$1,204.80

Michelle Smith	\$1,204.80
Paris Taylor	\$1,204.80
Angela Toney	\$1,204.80
Elijah Troupe	\$1,204.80
Shanta Tyler	\$1,204.80
Brianna Williams	\$1,204.80
Dameka Williams	\$1,706.80
Sherry Williams	\$1,706.80
Tanisha Williams	\$1,204.80

Total Backpay Due	\$58,031.20
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Dated, Washington, D.C. March 17, 2020

John F. Ring,	Chairman
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Marvin E. Kaplan,	Member
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William J. Emanuel,	Member
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⁴ These amounts do not yet include any excess tax liability. As set forth in the compliance specification, the Respondent is also liable for the adverse tax consequences for any employee receiving a lump-sum backpay award. These amounts may be updated to reflect the actual date of payment. Any adverse tax consequences shall be reported in accordance with *AdvoServ of New Jersey, Inc.*, 363 NLRB No. 143 (2016); *Don Chavas, LLC d/b/a Tortillas Don Chavas*, 361 NLRB 101 (2014).